



CONGRESSMAN

John J. Duncan, Jr.

Washington Report



Second District—Tennessee

December 2014

LEGISLATIVE UPDATE

✓ **New Congress**

Republicans will control the new Congress 247 to 188 in the House and 54 to 46 in the Senate (counting the two independents who caucus with the Democrats). This next Congress will have more than 100 women members (84 in the House, 20 in the Senate), the most ever. The main legislation will be on immigration, major highway and aviation bills, health care, the wars in the Middle East, and bills on jobs and the economy, energy, and tax reform. I hope the next Congress will be more business friendly and pro-free enterprise. We need to decrease federal regulation and the power of environmental extremists so we can create more good jobs. We still have far too much under-employment with several million having to work at jobs far below the levels of their education and/or skills and abilities. Of course, the President still has veto power and Republicans do not have enough members to override Presidential vetoes.

✓ **Great Turnover**

There is greater turnover in elective office today than almost any time in our history. People are not staying a long time in elective office, federal, state or local. In the House 216 will be new just since 2010 when the 114th Congress starts in January. The cost of public office keeps growing. The demands and expectations also keep growing, so more and more people just think it is not worth it to try to stay in office. I do believe seniority and experience has helped me get more things done for my constituents because of good relationships with many people in Congress and throughout the bureaucracy. While many of the faces in the House are new, I have several friends who are now in the Senate, and that has been helpful. In spite of the turnover, the average age of members has been about where it has always been — 61 in the Senate and 57 in the House in the new Congress.

✓ **Tax Extender**

At the end of the session in December, the House passed H.R. 5771, the Tax Increase Prevention Act. I have strongly supported this bill each time we have had to do this, and, once again, this bill is for only one year. Surprisingly, Senator Reid, Majority Leader in the Senate, agreed to make the bill permanent (meaning permanent unless the Congress specifically did away with them later), but the White House refused to agree to the longer term. The bill continued the deduction for state and local sales

taxes, which is very important to Tennesseans. It also included the extension of tax-free distributions from individual retirement accounts, which is very important to charitable organizations. The bill also continued the deduction of expenses for school teachers and several deductions very important to small businesses. What we really need, though, is major tax reform leading to a much simpler tax code.

✓ **ABLE Act**

Another very important bill passed at the end of the session was H.R. 647, the ABLE Act, a bill to allow parents or grandparents to set up savings accounts to care for severely disabled children. The contributions would be tax exempt, rather than tax deductible, and income earned on the accounts could not be taxed. Withdrawals for qualified expenses related to the child's disability would not be taxed, and contributions to such an account could be up to the gift tax limit (presently \$14,000). I was a co-sponsor of this bill. This legislation also included an unrelated but very important provision adding a nine cent per gallon fuel fee for the Inland Waterway Trust Fund. This was supported by farmers and businesses which use our inland waterways like the Tennessee and Mississippi Rivers. This will help pay for the necessary improves to the Chickamauga Lock outside of Chattanooga. While this Lock is not in our District, it is much more important to our economy than even to the Third District where it is located. I have worked on this Lock for a longtime with Congressman Fleishman and Senator Alexander.

✓ **Immigration**

The President has issued a very controversial Executive Order on immigration granting amnesty to millions of people who came here illegally. He said he had to act because the Congress had failed to pass new immigration laws. In my opinion, he ignored or glossed over the fact that we already have very detailed immigration laws on the books. The Congress can take action in three ways: pass a new law, change an old law, or leave present law in effect. It is best, whenever possible, to leave present laws in effect so that the highest number will understand what the law is. This helps overall stability and what is sometimes referred to as law and order. It is very dangerous to allow any President to order his administration not to enforce laws passed by Congress as our present immigration laws were.

This latest executive order will encourage many millions more to come here, illegally if necessary. In fact, President Obama himself in 2010 said amnesty would lead to a surge in illegal immigration (Washington Times, front page, Dec. 3 2010).

✓ **Massive Amnesty**

Kenneth Palinkas this past Oct. 28th issued a statement criticizing a contract bid for printing 34 million green cards and employment authorization cards and what he described as plans for "massive unilateral amnesty." Mr. Palinkas is the president of the 12,000-member union representing U.S. Citizenship and Immigration Service personnel, or what is commonly referred to as Border Patrol agents. He wrote: "Whether it's the failure to uphold the public charge laws, the abuse of our asylum procedures, the admission of Islamist radicals, or visas for health risks, the taxpayers are being fleeced and public safety is being endangered on a daily basis." He added that America "dodged a bullet" when the House refused to pass S.744, the Senate Immigration package, which he said would have been a "financial and security catastrophe." It is very unusual for the head of a federal employee's union to put out such a strong, critical statement about action being planned by a President. Most people want us to reform our immigration laws, but to first make our borders more secure.

✓ **Kind People**

The American people are the kindest, most generous people in the world. We have allowed many millions to immigrate here legally over the last 25 or 30 years, far more than any other nation. The Census Bureau made a conservative estimate in July of 2013 that we had at that time 41.3 million non-citizen immigrants living here. Tom Piatak, writing in Chronicles Magazine, said "today's immigrant population is double that of 1990, nearly triple that of 1980, and quadruple that of 1970." He said we need a moratorium so that our tremendous immigrant population can be better assimilated into this Nation. Our office has helped many hundreds immigrate here legally. I have spoken many times, as a lawyer, judge, and since being in Congress to naturalization ceremonies congratulating new citizens. Many of these people appreciate this country more than most because they have come here from such terrible places. But our entire infrastructure—our schools, hospitals, jails, roads, sewers, etc.—just could not handle the mega-millions who would

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come here in the next few years if we simply opened our borders. We are forced to have an immigration policy and it must be enforced.

✓ **Afghanistan**

The Defense Department keeps pouring billions into Afghanistan through the Overseas Contingency Fund. This fund is \$63.7 billion in this year's Defense Bill, some of which is used in other countries and was described by one Pentagon official as "magic money," I guess because it is over and above the regular defense spending. The Afghan government requested a \$537 million bailout from the U.S. to meet its October payroll, and the World Bank said Afghanistan would need seven billion a year for the next decade to sustain a functional government, maintain an infrastructure and pay its army and police. I have been one of very few who has been willing to vote against this because most members fear that they could be labeled as anti-defense if they do not support it. The Special Inspector General for Afghan Reconstruction has cited hundreds of examples and billions of dollars in waste over there. One of many, many examples is that we have provided 747,000 weapons to the Afghan Security Forces at a cost of \$626 million, 43% of which have now disappeared or cannot be accounted for.

✓ **Sad General**

This past Nov. 10th, retired Army General Daniel Bolger wrote in the New York Times: "As a senior commander in Iraq and Afghanistan, I lost 80 soldiers. Despite their sacrifices, and those of thousands more, all we have to show for it are two failed wars. This fact eats at me every day, and Veterans Day is tougher than most." He said the surge in Iraq did not win anything, just more time. And he wrote those who say only a strong ground offensive and another surge can win the fight against the Islamic State, he would say: "Really? If insanity is defined as doing the same thing over and over expecting different results, I think we're there." Conservative TV and radio host Bill Cunningham said recently that he was a "vehement supporter" of war against Iraq "for which I have now apologized." He said: "We cannot win. We can't choose between the Shias and the Sunnis and the Kurds, from between Hamas and Hezbollah. No matter what we do it's wrong... We can bomb them for the next 40 years, it won't make any difference. We are going to spend ourselves into bankruptcy, for what?"

✓ **Centrist Foreign Policy**

Columnist George Will wrote in mid-November that "the last 11 years have been filled with hard learning. The 2003 invasion of Iraq, the worst foreign policy decision in U.S. history, coincided with the mission creep (nation building) in Afghanistan. Both strengthened what could be called the Republicans' John Quincy Adams faction: America 'goes not abroad, in search of monsters to destroy. She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own.'" We should follow a centrist foreign policy that promotes freedom around the world through trade and tourism, cultural and educational exchanges, and limited help during humanitarian crises (we cannot do it alone). This policy would make it very clear that we would stay out of foreign wars unless our Nation was unified

that there was an actual or imminent threat to the U.S. While we have certainly had good intentions almost everything we have done in the Middle East wars has been wrong. The American people do not want, nor can we afford permanent, forever wars just because some people and companies profit from them.

✓ **New Rules**

The FDA is planning what the Washington Post described as a "slew" of new rules on fruits and vegetables: those usually consumed raw would have "strict new standards" while those cooked would be exempt. Leslie Judd, who with her husband and son, grow apples, cherries, and pears in Washington state, said "somebody in an office in Washington, D.C., who's never stepped foot off concrete has decided we need this rule and that rule....The market has already taken care of this problem, if it is a problem, which it isn't." Diane Kearns, a fifth generation apple farmer from Virginia, said, "The stuff coming in from China is not subject to the kind of regulation that American food is. People are being priced out of the business. You can't make money at it anymore." And Phil Glaze, another apple grower from Virginia said, "what's being proposed is very onerous and expensive" and that the costs "would end up getting passed on to the consumer, if we didn't go out of business first." You can go overboard on anything, even safety. Too much federal regulation drives out the smallest businesses and farms first and drives up costs for everybody.

✓ **School Lunches**

Many millions are being wasted now because of new federal standards or requirements on school lunches. Several local school cafeteria workers have told me about the waste in our area, but it is going on nationwide. One report given by Kansas City, MO television station KCTV on July 14 said some schools have reported a nearly 100% increase in wasted food since the federal government started dictating what schools could serve. In 2012 I spoke on the House floor criticizing a school system in North Carolina that would not allow a little girl in pre-school to eat the lunch her mother had sent - a turkey and cheese sandwich, chips, a banana, and apple juice- because it did not meet federal guidelines. The little girl's school instead gave her three chicken nuggets, and the news report said she went home hungry. The Nanny State- Big Brother Government - is going too far in many ways. But it is wrong to waste millions of dollars worth of food just because it made somebody in Washington happy to produce some more rules.

✓ **Too Many Laws**

Paul Larkin, Senior Legal Research Fellow at the Edwin Meese Center For Legal and Judicial Studies, wrote a few months ago in the Washington Times: "Today, there are perhaps 4,500 federal offenses - and more than 300,000 relevant regulations - on the books. No one knows exactly how many. The Justice Department and the American Bar Association each tried to identify every federal crime...and failed. No reasonable person, not even a judge or lawyer, could possibly know all of these legal prohibitions, although criminal penalties are attached to each." He said we need a "mistake of law" defense. There are so many laws, rules, and regulations on the

books today that no computer could keep up with them all, much less a human being. And they are all being frequently changed. Almost everyone has violated some federal or state law at some point. An innocent mistake is not supposed to be criminal, but a zealous prosecutor can make even the most innocent mistake look criminal. George Will wrote in his Dec. 11th column that "overcriminalization has become a national plague."

✓ **Big Business**

I have been asked at times why the biggest businesses in this Nation and internationally push the hardest for more government spending and regulation. It is really pretty simple. Most of the big federal contracts, tax breaks and favorable regulatory rulings go to the big giants in any industry, from banking right on down the line. And federal contracts are the most lucrative contracts in the world. And it is easier for government regulators to regulate a few giant businesses than hundreds of small ones. Also, it is tougher and more costly for small businesses or farms to comply with expensive, difficult, bureaucratic rules and regulations than it is for the biggest businesses to do so. Thus, big government drives out a lot of competition for the big guys. Liberals frequently claim they are for the little guy. Yet in the end, they help most extremely big business and government bureaucrats. Thus, in any big government system, or highly-regulated industry, the big get bigger, the rich get richer, and the small businesses and the little guy struggle and barely make it.

✓ **Big Scam**

Richard Rahn, Chairman of the Institute for Global Economic Growth, wrote in late November: "The longest running scam is the big lie that more government spending will create jobs and raise wages. When it does not work as advertised, we are frequently told the problem was 'not enough government spending.' To believe this scam, one needs to believe that government is more efficient than the private sector in general, and that the extraction costs of government taxing or borrowing or confiscating private property do not diminish people's productivity or willingness to work, save and invest.... When politicians and their policy advisors claim that this or that government project is going to create X number of jobs, most often they leave out the part about how many jobs will be lost in the private sector because of the increase in taxes or borrowing to fund the government project." Every dollar that can be kept in private hands rather than wasteful, inefficient government hands will do more to create jobs and hold down prices.

✓ **Big Success**

The federal government has been a great success at turning small problems into big ones. This has happened in every area or field. But the biggest examples are in federal student loans and medical care. College tuition was cheap and went up only at roughly the rate of inflation. When I was at the University of Tennessee, students could work part-time and pay all their expenses. No one borrowed money to go to college. Now, after tuition has gone up from four or five times the rate of inflation for 40 or 45 years, students across the Nation have incurred debts totalling over one trillion dollars. Medical care

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was cheap and affordable until the federal government started getting into it in the mid-60s. Now, everyone except the very wealthy could be wiped out by a major illness or medical problem. Some want us to go to a single-payer plan, but the solution is not to go to a Russian-type medical system. The simple, easy answer – to have a federal program – is almost always the worst answer and certainly the most expensive solution to any problem.

✓ **Private Property**

Several months ago, the House passed H.R. 1944, the Private Property Rights Protection Act by a vote of 353 to 65. This bill would have prohibited any state, county, or city that received federal economic development funds from using any of that money to take private property by eminent domain. This bill, like so many others, died in the Senate. I hope we can pass this again in the New Congress. This bill was in reaction to the 2005 Kelo decision in the U.S. Supreme Court. Seven owners of small homes in New London, Connecticut, fought that City all the way to the highest court but lost in a 5-4 decision. Now, nine years later, with their homes gone, the property remains vacant and undeveloped. The key to the whole deal was a commitment by the City to give the giant Pfizer Co. a 10-year abatement on property taxes, but after the homes were gone, Pfizer pulled out. Justice Sandra Day O'Connor, who was one of the four dissenters, wrote at that time: "Today, the Court abandons the Fifth Amendment's long-held basic limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded, i.e. given to an owner who will use it in a way that the legislature deems more beneficial to the public..." Columnist Jeff Jacoby wrote in the Boston Globe: "the homeowners were dispossessed for nothing...The Kelo decision was a disaster, as even the City's present political leaders acknowledge."

✓ **Marijuana Debate**

Seventeen of the 18 medical doctors in the House voted not to legalize marijuana, and I also voted that way. A few months ago, a joint study by researchers at the Massachusetts General Hospital in Boston and Northwestern University School of Medicine found that even limited, casual use of marijuana can cause brain damage. Dr. Staci Gruber, a professor at the Harvard Medical School, who has done other studies on marijuana said its use "during a period of developmental vulnerability may result in neurophysiological changes which may have long-term implications." I have never understood why many liberals who are very anti-tobacco think it would be a good thing to legalize marijuana. We should discourage young people from smoking either one, and marijuana has led many into using even more dangerous drugs. Nora Volkow, head of the National Institute on Drug Abuse, told the Washington Post that repeated use of marijuana not only creates an "increased risk for addiction," but "there is also a higher risk for long-lasting decreases in cognitive capacity -- that is lowering of IQ." I am not opposed, however, to further study to determine if some property or element can be extracted from marijuana or hemp to use medicinally in treatment of epilepsy.

✓ **Oil Prices**

This Administration, in my opinion, has done what it can to slow or prohibit oil and gas production on federal lands. The President's Secretary of Energy during his first term, caving into the powerful environmental lobby, said we should pay the same price for gas that they were paying in Europe -- \$8 or \$9 a gallon. That would have really shut this Country down economically and hurt middle and lower-income people in a big way. However, thanks to fracking and new technology, and especially oil production on private and state lands, we have a boom and much lower gas prices. Daniel Yergin, a Pulitzer Prize-winning author and energy expert, said at a conference in Washington this past summer that were it not for the new technology "We'd be looking at an oil crisis. We'd have panic in the public. We'd have angry motorists. We'd have inflamed Congressional hearings, and we'd have the U.S. economy falling back into a recession. Instead, U.S. natural gas production is up over one-third since 2005 and crude oil production is up two-thirds since 2008."

✓ **Land Grab**

The Heritage Foundation sent to each member of Congress a letter describing what it called a "sneaky tactic to grab more U.S. land for the government" in the end-of-the-year defense bill. Many provisions about wilderness areas and parks were added in the last days of the session to the National Defense Authorization Act, knowing that most members want to vote for that bill. Heritage says this "presents an opportunity to not only lard up the NDAA with pork, but would also "lead to more government ownership of America's land and more restrictive land use policies that prohibit every development and economic activity." The federal government already owns almost one-third of U.S. land, and state and local governments, quasi-government agencies, and conservancies own many millions more acres of land, taking more land off the tax rolls every year. The National Park Service has 401 units, and there are hundreds of state parks and thousands of local parks. Knoxville, Memphis, Nashville, and Chattanooga have 441 parks between them, with hundreds more all over Tennessee. The Smokies are the big exception, but the great majority of these parks are not heavily-used. All politicians want credit for creating a park, but we really need to stop creating new ones and take better care of those already in existence. Also, it is going to be very expensive for young people to buy homes in the future if we keep making more land unavailable for development.

✓ **Unaffordable**

The President and some of his staff and supporters in Congress promised that healthcare costs would go down from \$2500 to \$3000 a year if the Affordable Care Act was passed. Now, for most people, premiums and/or deductibles have gone up and often coverage has gone down. In addition, Dana Milbank, a liberal columnist for the Washington Post who is usually supportive of the President, quoted three headlines stating that health care costs would come down. But then he wrote about a Congressional Budget Office (CBO) report that "wasn't pretty for Obamacare." Milbank wrote that the CBO is the "Capital's closest thing to a neutral referee" and added: "The

law would reduce the workforce in 2021 by the equivalent of 2.3 million fulltime workers" and "will inevitably be a drag on economic growth, as more people decide government handouts are more attractive than working. One East Tennessee businessman who operates a major chain of fast-food restaurants told me that he had a combination of 1100 full-time and part-time employees but had been forced to go to 1700 mostly part-time employees because of the healthcare law.

✓ **Liberal Elitist**

The words "liberal" and "elitist" often go together because liberalism is based on the false premise that government knows best—especially the federal government—and that most people cannot manage their own affairs or businesses without government "help". Conservatives believe that most people can run their own lives and spend their own money better than the government can do it for them. Nothing showed liberal elitism more clearly than the statement by MIT professor Jonathan Gruber that Obamacare needed a "lack of transparency...and call it the stupidity of the American voter or whatever, but basically that was really, really critical for the thing to pass." Gruber was a consultant who helped write the law, and MIT was given a \$2,000,000 grant for this work. Ed Konecnik, of Flushing, NY, in a Letter to the Editor of the Washington Times, wrote: "It should not be missed by any of us that we are being assaulted by a progressive agenda of a ruling elite that thinks we are not capable of managing our own lives. This ruling class insists on imposing its righteous vision upon us for our own 'good.'"

✓ **Export-Import Bank**

The Export-Import Bank subsidizes financing for U.S. exporters and their foreign customers. The Bank was involved in financing some \$27 billion in projects last year and has an outstanding portfolio of approximately \$140 billion. This is a federal bank, meaning taxpayers could be on the hook for some very large loans. Most of this financing goes to some of the largest corporations in the world, with Boeing being the largest customer and the Bank's top 10 beneficiaries getting 76% of its business. Exxon-Mobil got \$3 billion in financing in 2010 after paying \$97,000 worth of travel expenses for Ex-Im Bank employees. Over the last five years 74 allegations of bribery or other forms of corruption have become public on this Bank's employees. One pled the fifth recently in front of one of my committees. Probably every Congressional district has some business that has benefitted from an Export-Import Bank Loan. But 99.9% of businesses do not receive any of this financing. With interest rates as low as they are, and most of this money going to very large businesses that could very easily get private loans at the lowest rates, it is simply not necessary for the federal government to keep playing favorites in this way.

✓ **Great Deal**

The President signed a great deal on Climate Change in China recently—in my belief great for China at least. However, if carried out, it will send many more jobs out of the U.S. and drive up utility bills for our citizens. The agreement commits the U.S. to cutting emissions by 26 to 28 percent by 2025 while the Chinese promise

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to do almost nothing until after 2030 if then. This follows on the heels of two Chinese billionaires coming out like bandits at U.S. taxpayer expense because our Department of Energy made a \$529 million loan to Frisker Automotive, Inc. Another "green energy" flop, Fisker went bankrupt and billionaire Lu Guangiu bought its assets for \$149.2 million. Then billionaire Richard Li purchased the taxpayer-backed loan for \$25 million. The Wall Street Journal reported that this was a "deeply discounted price" and that Mr. Li could profit as much as \$90 million from the purchase of this loan. We have done more to clean our air over the last 40 or so years than any other nation, but some groups raise a lot of money by convincing people we haven't made our air much cleaner, which we have.

✓ **Wind Energy**

No other industries have been subsidized by the taxpayers percentagewise nearly as much as the wind and solar industries. I have nothing against either one if they could stand on their own as we make most businesses do. Crony capitalism is not good for taxpayers. Former Congressman Ernest Istook wrote recently that wind energy handouts have been "a 22-year gamble" and that wind advocates have now become "addicted to subsidies" that cost the federal government \$10 billion a year. He added: "There is nothing inherently wrong with wind power. What is inherently wrong is to compel people to use the highest-cost energy. It would be equally wrong to force you to order the highest-priced meal at a restaurant or purchase the most expensive pair of shoes or to buy the gasoline at whatever outlet charges the most." We frequently hear complaints about subsidies to oil companies, but most of these are ordinary write-offs that all businesses get. And Randall Luthi, President of the National Ocean Industries Association, says the oil and natural gas industry "generates billions in revenue to the federal treasury annually through bonus bids and rents on leases and royalties on production."

✓ **Solar Subsidies**

As Tim Antonacci pointed out recently in the Knoxville News-Sentinel, a Company called NRG Energy has applied for a \$539 million grant from the Treasury Department. They are asking for a government handout to make their payment on a government loan. On February 25, NRG applied for an extension from the Department of Energy to pay off the first installment of its original \$1.6 billion federal loan. The Company received an extension to February 27, 2015 on its \$132 million payment. Then, it had its next installment, a \$159 million loan payment due on October 27 extended to April 27, 2015. All these loans and extensions were done to this and other companies because the very powerful environmental movement is in love with solar energy. Despite mega-billions in loans and subsidies to well-connected solar energy companies, solar power is producing only a miniscule 0.23% of our total energy according to the U.S. Energy Information Administration. In 1978, the Wall Street Journal had a headline saying, "Solar Power Seen Meeting 20 Percent of Needs by 2000." For all these years, the solar industry has been making promises that have not even come close to being fulfilled. I spoke out on the floor of the House in 2009 against continuing these billion-dollar subsidies.

✓ **Welfare State**

President Clinton, in his State of the Union Address to Congress in 1996, declared that "the era of big government is over." Yet, William Voegeli, a visiting scholar at Claremont McKenna College in California, pointed out in a speech at Hillsdale College this past October that federal welfare state spending has gone way up since then even when adjusted for inflation and increases in population. He said it went up more than two and a half times from 1977 to 2013. It went up 58 percent from the inauguration of President Clinton to the inauguration of President Obama in 2009, even when you take off all increases due to inflation and population growth. Dr. Voegeli said: "All along, while the welfare state was growing constantly, liberals

were insisting that it wasn't big enough or growing fast enough." You can never satisfy government's appetite for money or land. They always want more. Government agencies are like drug addicts! When they get more, as they usually do, it satisfies only for a short time. And they are indifferent to waste, because the money is not coming out of their own pockets.

✓ **Newsletter**

Several people have asked over the last few months why they have not received one of my newsletters. Under our rules, I cannot send a newsletter 90 days before an election. Most years, there has been a brief window in August during which I could send one. However, this year there were only 88 days between the primary and general elections, so this is the first newsletter I have sent since this past April. These are sent out Postal Patron so every address is supposed to receive one if delivered. Most members do not send out newsletters, and most who do fill them with pictures or offers of constituent service, but I write newsletters with serious legislative news and even items that are controversial. Occasionally, but not often, someone gets mad over some item, but I certainly do not purposefully try to make anyone angry. I realize that no two people—even best friends—agree 100% of the time. Over the years, the response to my newsletter has been overwhelmingly positive, and I wish our budget would allow me to send them out a little more often.

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